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# TRUMP'S FEDERAL COPS JUST GAVE THEMSELVES EXPANSIVE ANTI-PROTEST POWERS TARGETING MASKS

The Trump administration's fast-tracked rules grant the Federal Protective Service sweeping powers to make arrests off federal property.

Matt Sledge

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A Federal Protective Service officer stands guard inside the perimeter fence of the Mark O. Hatfield U.S. Courthouse on July 24, 2020, in Portland, Ore. Photo: Nathan Howard/Getty Images

**CITING "CIVIL UNREST"** in American cities, the Department of Homeland

Security has accelerated new regulations meant to expand the powers of a little-known federal police force.

The new rules drew scant notice when they were first proposed during the twilight of the Biden administration. Now, using language about “rioters” at federal facilities, the Trump administration is fast-tracking the rule changes — which critics say DHS could use as a pretext to go after protesters wearing frog costumes or making a racket on the streets of Chicago and Portland, Oregon.

The new regulations could empower the Federal Protective Service, a little-known police force under DHS tasked with securing federal facilities, to pursue more arrests outside of federal property itself. The Federal Protective Service has played has played an outsized role in Trump’s crackdown on Democratic-majority cities, where protests against U.S. Immigrations and Customs Enforcement have turned into scenes of brutal crowd dispersal and arrests.

## “It is clear that DHS sees what is in this regulation as a go-ahead to operate well off federal property.”

“It is clear that DHS sees what is in this regulation as a go-ahead to operate well off federal property, including potentially in private homes and businesses and the like,” said Spencer Reynolds, a former Homeland Security lawyer turned critic. “We are seeing that play out on U.S. streets. Federal agents are taking a really aggressive hand to protesters who are largely peaceful.”

Among the new rules was the criminalization of protesters wearing masks. The mask ban ostensibly applies only to those trying to conceal their identity during a crime, but the Trump administration has taken an expansive view of criminal behavior in protests that includes an array of First Amendment-

protected activity.

The Department of Homeland Security said in a written filing Tuesday that it was bypassing the standard notice process and moving up the effective date of the new rules by two months to address a "cascade of violence, which is threatening the lives of federal law enforcement officers and the safety of federal property on a daily basis." On Wednesday, the agency announced the expedited changes.

"Under President Trump and Secretary [Kristi] Noem, we will not tolerate violence perpetuated by Antifa and other domestic extremists who are targeting federal property and law enforcement. Law and order will prevail," Homeland Security assistant secretary for public affairs Tricia McLaughlin said in the announcement.

The Federal Protective Service has the power to deputize agents from Customs and Border Protection and ICE to enforce the regulations, which carry the force of law.

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# Rushed Rule Change

When the Department of Homeland Security proposed the new regulations on January 15, five days before Trump's inauguration, they drew little attention. Only a single person submitted a comment to the rule-making docket.

Perhaps that was because the Federal Protective Service has long flown under the radar. With roughly 900 officers, the agency is charged with protecting thousands of federal buildings and their grounds. Its mission and staffing were expanded after the 1995 Oklahoma City federal building bombing and the September 11 attacks.

Moreover, the Department of Homeland Security cast the new rules as mostly a matter of bureaucratic housekeeping. Yet they could give the Trump administration new tools to go after protesters, as the department seemed to acknowledge in the Tuesday notice that it was moving up their effective date from January 1, 2026.

"DHS finds that there is 'good cause' to bypass notice-and-comment rulemaking and a delayed effective date, because such procedures are impracticable here," the agency said. "There is an immediate need for DHS to move up the effective date of the June 2025 rule, because of the recent increase in civil unrest, targeting of federal law enforcement officials, and destruction of federal property across U.S. jurisdictions."

The new rules expand the number of buildings where the Federal Protective Service can issue citations, and they create new categories of misdemeanor violations. Perhaps most notably, they also purport to expand the police force's ability to investigate and enforce violations of "off-property misconduct."

Under previous rules, unless there was either a specific federal criminal statute or a memorandum of understanding that would allow the

Department of Homeland Security to enforce state and local laws, the agency's hands were tied when it came to some types of "off-property" activity.

The changes, the department said in January, "serve to fill the void where there is no applicable federal statutory charge applicable to the conduct and no MOU permitting DHS to charge state or local offenses."

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# Unmasking Protesters

Newly banned "off-property" activities include wearing disguises, creating loud noises that disrupt government employees, or blocking the entrances and exits to federal property. While some of that behavior was previously banned on federal grounds, the mask provision is entirely new.

The Department of Homeland Security said in January that the mask ban would be "expressly limited to instances when a person is concealing his/her identity to avoid detection while violating an applicable law."

Still, the provision is ripe for abuse, said Reynolds, the former Homeland

Security attorney who now serves as a senior counsel in the Brennan Center's liberty and national Security program.

## "There is a significant risk that this will become another basis for targeting activists."

"There is a significant risk that this will become another basis for targeting activists who may be wearing masks or full-body frog costumes, as we have seen in the past few months," he said. "It gives another justification for federal agents to build a questionable narrative that these people are dangerous, and also for them to incorporate that in citations and criminal charges."

The new regulations seem to be part of a larger push from the Trump administration to unleash the Federal Protective Service. In a memo last month obtained by journalist Marisa Kabas, the Homeland Security acting general counsel said there is "no legal barrier to FPS taking action off federal property where a reasonable nexus to protecting that property exists."

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No matter what the new regulations purport to do, they cannot give the Department of Homeland Security more powers than Congress or the Constitution have granted, said Athul Acharya, executive director of the Portland-based nonprofit law firm Public Accountability.

Acharya in 2020 helped win an injunction barring federal agents from

targeting journalists for arrest during the George Floyd protests.

He said, “Whatever powers the Trump administration may have, or think it has, or tries to give itself, it can’t authorize the use of excessive force, it can’t stop people from exercising their right to free speech, and it can’t stop reporters from reporting on what’s happening at federal properties.”

## Trump’s Crackdown Cops

Since Trump’s first term, the Federal Protective Service has stood at the center of legal debates over the extent of his authority to crack down on defiant American cities.

In 2020, Federal Protective Service officers faced off against demonstrators in Portland during the racial justice protests there. Bolstered by deputized agents from Border Patrol, the federal government’s response included grabbing people into unmarked vans.

Three years ago, Federal Protective Service officers were accused of instigating a confrontation with abortion rights protesters in Los Angeles, half a mile away from the courthouse where a protest against a pending Supreme Court decision began.

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More recently, the Justice Department was caught overstating the number of

Federal Protective Service officers who were shuffled to Portland in response to this year's protests against mass deportation, in an effort to bolster the legal case for sending the National Guard to backstop them.

Reynolds, the former Homeland Security lawyer, has called for limiting the agency's powers to ensure that it cannot be used for political repression. He acknowledged that is a long shot with this Congress, but he says local governments can take actions such as limiting data sharing in the meantime.

"Cities and states," he said, "are absolutely in their right to opt out from helping the Federal Protective Service and other agencies go after their residents who are protesting and expressing dissent."

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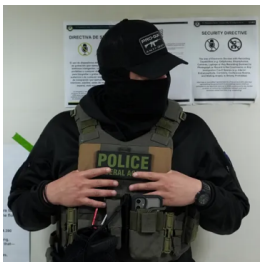


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